* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : May 29, 2007
Date of Decision : June 11, 2007

\+ W.P.(C) 3274/2000 & CMS 5007-08/2000

THE PATRI ASSOCIATION REGD & ORS. ..... Petitioners
Through Mr. Maninder Singh with Mr. Kirtiman Singh,Mr. Gaurav Sharma and Mr. Tanubhan Singh, Advocates.

versus

MUNICPAL CORPORATION OF DELHI ..... Respondent
Through Mr. Vibhu Shankar, Advocate for MCD.
Ms.Sangeeta Chandra, Advocate for DDA.

AND

\+ W.P.(C) 4499/2000

THE PATRI ASSOCIATION REGD & ORS. ..... Petitioners
Through Mr. Maninder Singh with Mr. Kirtiman Singh,Mr. Gaurav Sharma and Mr. Tanubhan Singh, Advocates.

versus

UNION OF INDIA & ORS. .... Respondents
Through Mr. Vibhu Shankar, Advocate for MCD.
Ms.Sangeeta Chandra, Advocate for DDA.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

: Dr. S. Muralidhar, J.

1. The petitioner, the Patri Association is an association of traders stated to be squatting at 6x4 feet tehbazari sites opposite Mohan Singh Market, INA since 1979. It has filed these two writ petitions seeking to restrain the Municipal Corporation of Delhi ('MCD') from removing its members from their respective tehbazari sites which, according to them, they are in lawful possession of and for removal of encroachments by unauthorised squatters.

Background Facts

2. The background to the filing of these petitions is that the Mohan Singh Market Association, INA Market, New Delhi had earlier filed W.P.(C) No.2052 of 1996 in this Court. The members of that Association were the regular shopkeepers. They sought a direction for removal of illegal squatters from the market. In the said writ petition, a counter affidavit dated 15.5.1997 was filed on behalf of the MCD by Shri Jagdish Chandra (AO) stating that there were 51 authorised squatters who were allotted tehbazari sites of 6x4 feet since 1979. Enclosed to the affidavit was a list of 51 such tehbazari holders. The relevant portions of the said affidavit read as under:

> "1. For that the premises in question, forming part of the subject matter of the instant writ petition has been given on tehbazari basis to the respective tehbazari holders by the Municipal Corporation of Delhi. That the site in question was allotted to the eligible squatters in the year, 1979 as per the Resolutions passed by the M.C.D. to settle the Rehri/patri/khomcha walas. I**t is stated that that since 1979 till date the said squatters are continuously squatting at the site in question and as and when any encroachment beyond an area of 6'x4' is found, the same is removed immediately by the MCD U/s. 320/321 of the DMC Act, 1957**.
>
> In this context, it is relevant to state that the Municipal Corporation of Delhi with the help of Local Police have removed all the unauthorised squatters/encroachments beyond the allotted area of 6'x4' on 28.10.1996 and 17.4.1997 and at present only the eligible squatters are squatting at their allotted sites 6'x4' open to sky. However, the MCD has been taking action from time to time against the encroachments. The allegations thus levelled against the MCD officials in qua connivance are baseless, frivolous and incorrect.

2. ……..**The said space was allotted to the eligible squatters in the year 1979 to the extent of 6’ x 4’, details whereof is also appended herewith**.

…….

The MCD has no other record available with it, except the Tehbazari receipts that have been issued since 1979 onwards to these tehbazari holders.

3. For that it is further relevant to place on the record of this Hon'ble Court the orders of the Hon'ble Apex Court dated 01.05.1997 in the case of ***Gainda Ram v. NDMC*** and other connected IA's. It is stated that in the case of ***Gainda Ram v. MCD*** the Hon'ble Supreme Court of India had decided the matter of the squatters who were squatting since 1972 to 1982 and 1982 to 8.7.1991. The squatters who come under the first category have already been allotted tehbazari measuring 6'x4' open to sky opposite Mohan Singh Market INA in the year 1979. For the second category applications were sought with the proof of their continuous squatting at the site and accordingly they were also allotted the tehbazari sites at squatting zones approved by the Zonal Tehbazari Committee as per the directions of the Hon'ble Supreme Court of India vide directions that all the suits/writ petitions/appeals pending in the High Court, District Courts stood disposed of in terms of the said Orders and that no further suit/writ petition would be entertained by any Court. It was directed that the aggrieved persons could file applications in the Supreme Court of India itself as Interlocutory applications in writ petition No. 1699/1987 ***Gainda Ram & Ors. v. MCD and Ors*** for appropriate orders and the judicial officers of the Bank of Additional District and Sessions Judge was appointed to look into the matter. Shri R.C. Chopra who was appointed as a Judicial Officer had submitted a report in this regard. With respect to this Report the Hon'ble Supreme Court of India vide Orders dated 27.03.1997 now has been pleased to review all the tehbazari cases of the squatters and six months time has been given to the MCD for re-scrutinising the applications which have to be sought from the squatters. **Vide the Orders dated**

27.03.1997 the Hon'ble Apex Court has directed that status quo orders would continue to operate qua the eligible squatters who have been squatting at their present place of squatting and in the light of the said directions the MCD really cannot do anything in the matter.

4. For that the following directions have been given to the MCD by the Hon'ble Apex Court:-

1) Those squatters who were ordered to be removed by the earlier orders of this Court passed from time to time was not entitled to any benefit of this status quo order.

2) Those squatters who are directed to shift at alternative site pursuant to the Orders passed in the IA moved by them before this Court earlier and which were already disposed of by this Court, shall also be required to comply those orders of this Court and will not get the benefit of the present status quo order of this Court.

3) Those squatters who were also subjected to any orders of removal from the sites under the orders of LG but who are covered by the earlier status quo order dated 27.03.1997 which is continued till date or who are protected by any injunction issued by any competent court will have their earlier removal made subject to the final result of the present exercise and only case of their earlier removal, status quo order of the 27th March, 1997 onwards, if at all operating in their favour will not loose its efficacy for them. However, **this judgment pertains to the squatters who were squatting since 1982 onwards but justice does not permit to remove the eligible squatters who were squatting earlier to 1982 and at this site all are eligible squatters since 1979.**" (emphasis supplied)

3. In the parawise reply to the writ petition in the aforementioned affidavit, Shri Jagdish Chandra stated as under:

"In fact there are about 50 tehbazari holders at the site in question, who have been allotted sites measuring 6'x4' on

temporary basis as open to sky tehbazari on public/Government land. Beside the said aforementioned 50 persons, two other sites have also been allotted to handicapped person. One site is measuring 7'x5' and the other is 8'x8' covered tehbazari. Besides these, no other persons have been allowed to squat unauthorisedly as has been alleged. It is stated that as and when any unauthorised encroachment occurs or any unauthorised squatters are found, the same is are removed immediately by the MCD."

Appended to the affidavit was the following verification:

"VERIFICATION:
Verified that the contents of the aforesaid affidavit are true and correct to my knowledge derived from the records of the case and nothing material has been concealed therefrom.

DEPONENT"

Order dated 5.5.2000

4. In addition to the above some of the squatters filed a separate writ petition being W.P.(C) No. 6396 of 1999. Both the writ petitions, W.P.(C) No. 2052 of 1996 and W.P.(C) No. 6396 of 1999 were disposed of by a common order dated 5.5.2000 of this Court which reads as under:

"C.W. No.6396/1999 & C.W.No.2052/1996
These writ petitions have been filed by the petitioners wherein allegations and counter allegations have been made. It is the contention of the petitioners in the present writ petitions that some of the respondents have made unauthorised constructions in the 'varandah' and other places in the Mohan Singh Market, INA, New Delhi, illegally and in violation of the terms of allotment which allegations are denied by some of the respondents herein with a counter allegation that some of the petitioners are unauthorised squatters in and around the said market and, therefore, action should be taken against the said squatters.

I have heard the learned counsel appearing for the parties. There could be no denial of the fact that the unauthorised constructions, if any, existing in the said market whether it is in the 'verandah' or any other place, the same shall have to be removed by the concerned respondent in accordance with law in view of various directions of this court including the direction issued by the Division Bench of this court.

The competent authority is directed to make an inspection of the aforesaid premises and point out all the unauthorised constructions made in the said market whether it is in the 'verandah' or in any other place, to the concerned person upon which the said unauthorised constructions shall be removed within a week from the date of pointing out the illegality committed. In case of failure on the part of the said persons to remove the said unauthorised constructions, the concerned respondent shall take necessary action in accordance with law to demolish the unauthorised constructions which are illegal and made in violation of the terms of allotment. So far the allegation regarding unauthorised squatters, who are occupying the land illegally in the said market, is concerned, inspection shall also be made by the competent authority in respect of the said squatters and action in accordance with law shall be taken against the said unauthorised squatters.

So far the authorised squatters in the said market are concerned, they shall be directed not to encroach upon the area beyond which they are not entitled to occupy and necessary action in accordance with law shall be taken in respect of such squatters. Necessary verification in that regard should be made by the concerned respondent within three weeks from today and after such verification, action shall be taken by the concerned respondent in accordance with law and in terms of the directions issued herein.

In terms of the aforesaid observations and directions, the writ petitions stand disposed of."

5. The members of the Patri Association, who were the squatters at the Mohan Singh Market, were aggrieved by the fact that despite the above order dated 5.5.2000 the MCD was attempting to remove them at the instance of the shopkeepers. When they visited the office of the MCD on 23.6.2000 they were informed that a raid was to be carried out on 27.6.2000 and the tehbazari holders were to be evicted. At this stage the present Writ Petition No.3274 of 2000 was filed and on 26.6.2000 the following Order was passed by this Court:

> "Present: Mr. Maninder Singh for the petitioners.
> C.W. 3274/2000
> Rule
> C.M.5007/2000.
> Notice to the respondent for 10th November, 2000.
>
> The respondent and its officers and employees are restrained from removing their respective Tehbazari rights at Mohan Singh Market, INA, until further orders.
> Dasti."

The Second Affidavit

6. On 20.9.2000 Mr. O.P.Balwani, Assistant Commissioner, MCD filed a counter affidavit in which, while relying on the Orders of the Hon'ble Supreme Court in ***Gainda Ram's*** case, an attempt was made to wriggle out of the earlier affidavit filed by Shri Jagdish Chandra. It was stated in para 5 of this affidavit as under:

> "Para 5 of the petition is substantially correct so far as it refers to the record of Civil Writ Petition No. 2052 of 1996. **As regards counter affidavit filed by Shri Jagdish Chandra, Administrative Officer of Municipal Corporation of Delhi I have gone through the same and I find that the same does not contain full facts and the same seems to have been**

filed on mistaken facts. The fact is that present petitioners were not eligible as they had never applied under the scheme and as such no Tehbazari site could ever be allotted to them. The present petitioners were only given temporary Tehbazari on daily basis which is revocable at any time and does not confer any permanent right to squat." (emphasis supplied)

The Third Affidavit

7. On 12.12.2000, during the hearing of certain miscellaneous applications, this Court was informed by the learned counsel for the MCD that it would require time to verify "whether the petitioners are the same 52 persons who were accepted as duly licenced squatters since 1979." The MCD was directed to file an additional affidavit to this effect within 8 weeks. Pursuant to the above order an affidavit dated 19.4.2001 of Shri O.P.Balwani, Assistant Commissioner, MCD was filed in which it was contended:

"1. As per order dated 12th December, 2000 I have carefully examined the counter affidavit filed by Shri Jagdish Chandra, Administrative Officer, in Civil Writ Petition No.2062 of 1996 filed by Mohan Singh Market Association. **The said counter affidavit has been wrongly interpreted by the present petitioner in as much as it was nowhere admitted that the present petitioners were eligible squatters**. **The averments made in the said affidavit were of general nature** and it was throughout asserted that unauthorised squatters were being removed by Municipal Corporation of Delhi from time to time and that site in question was allotted to the eligible squatters. This Hon'ble Court had disposed of the said writ petition with general directions to remove the unauthorised squatters and to keep the area clean from all encroachments without any finding on the eligibility of present squatters. The documents filed along with my main counter affidavit clearly establish that the present squatters are unauthorised and no regular allotments have been made to them.

2. As per order dated 1st December, 2000 passed by Hon'ble Supreme Court all unauthorised squatters have to be removed and no squatting can be permitted at the present site which has since been declared as non-squatting. A copy of order dated 1st December, 2000 is filed as ANNEXURE AR-1."(emphasis supplied)

[The above affidavit dated 19.4.2001, although filed, was not available in the records of the present case when the case was taken up for hearing. Pursuant to a direction issued by this Court on 16.5.2007, a copy has been filed by the MCD along with a compilation of documents]

The subsequent orders of this Court

8. On 19.9.2001, after the above affidavit was filed, this Court passed the following Order:

"19.9.2001

Present: Mr. Maninder Singh for the petitioner.
Mr. Shiv Kumar for respondents.
Mr. Meet Malhotra for the applicant.

C.M.No.5832/2000

I have heard counsel for the parties. I am of the view that the applicant may not be impleaded as a party but he is permitted to intervene in the matter. The application stands disposed of.

CWP No. 3274/2000

Learned counsel for the petitioner Mr. Maninder Singh has addressed me for quite some time. He relies on the counter affidavit filed by Mr. Jagdish Chandra, Administrative Officer, in CWP No. 2052/1996. Learned counsel has taken me through the above affidavit as well as the judgment dated 5th May, 2000 of Hon'ble Dr. Justice M.K.Sharma. The sum and substance of the argument is that a reading of the above affidavit filed on behalf of MCD and the list attached along with and the

judgment, status of petitioners as eligible squatters since 1979 stands established. He submits that the attempt by the MCD in the subsequent affidavit to retract from the said position by stating that the earlier affidavit did not contain full facts and seems to have been filed on mistaken facts should not be countenanced by the Court as it would defeat the rights, which the petitioners had acquired in terms of the scheme as propounded by the respondents and as upheld by the Supreme Court and recognised in the judgment of this Court. This is a matter which requires consideration.

Admit.

Mr. Shiv Kumar prays for an expedited hearing saying that Mohan Singh Market, INA has been declared as a non-squatting zone and, therefore, an early hearing in the matter is called for as otherwise it would impede the development activities and the removal of unauthroised squatters. Learned counsel for the petitioner has no objection to the same. Petitioners dispute that they fall within the non-squatting zone policy.

Let counsel for the parties file written synopsis not exceeding 5 pages within four weeks.

List the case on 31.1.2002, in the category of 'Regular Matters' subject to overnight part-heard."

9. A grievance was made that persons who were squatters were not following the terms and conditions on which the tehbazari rights were granted. On 29.8.2002 an Order was passed in CM No. 9163/2002 whereby the Court was assured by the MCD that the action will be taken against those violating tehbazari terms and conditions.

10. On 17.7.2003 the petitioner Association filed the second mentioned writ petition W.P. (C) No.4499 of 2003. The need for filing this petition was on account of the fact that the MCD had taken no

action to remove the unauthorised constructions and encroachments in terms of the Order dated 5.5.2000 passed by this Court. Therefore a prayer was made in the said writ petition for a direction to the Respondents "to remove all the illegal and unauthorised encroachments on the veranda opposite passage in the INA Market New Delhi (opposite Mohan Singh Market)." Rule was issued in this writ petition on 18.7.2003 and later on 3.9.2003 the shopkeepers were allowed to be impleaded as parties. Thereafter both these writ petitions were listed and heard together.

11. After hearing the matters at length, this Court on 29.3.2007 passed the following Order:

> "Counsel for the Petitioner states that pursuant to the Order dated 11.1.2007, the synopsis on behalf of the Petitioner is ready and will be filed during the course of the day with advance copies to the counsel for the Respondents. The counsel for the Respondents says that the synopsis on their behalf has already been filed in 2002. Nevertheless, since several orders that have been passed by the Hon'ble Supreme Court from time to time on the issue, the Respondents should file a supplementary affidavit updating the latest position in the matter. The supplementary affidavit be filed within a period of three weeks from today. The Petitioners are permitted to file a response to that affidavit within a further period of two weeks thereafter.
>
> List on 16.5.2007. Interim orders to continue.
>
> It is made clear that there will be no further adjournments in this matter."

12. Pursuant to the above Order, learned counsel for the MCD informed the Court at the hearing on 29.5.2007 that the MCD was not

in a position to confirm whether the subsequent affidavits have been filed on the basis of the record since, barring a few papers, no records were able to be traced. Apart from placing the affidavit dated 19.4.2001 on record, learned counsel for the MCD has placed a few documents to show that even prior to 1979, in certain areas (other than the INA Market) letters have been issued granting tehbazari rights. His contention was that in respect of the 51 persons whose names figure in the list appended to the affidavit dated 15.5.1997 of Sri Jagdish Chandra, the MCD has on its record only a letter dated 29.12.1983 issued to Shri Sardari Lal which reads as under:

> "Sir,
> In continuation to letter No. L.No./1023/CL+EC/83 dated 12.12.83, you are hereby informed that a site in the vicinity where you are squatting at INA, Mohan Singh Market has been allotted to you vide ADC's orders dated 27.12.83. The site will be of 7'x5' size @ Rs.60/- pm on the usual terms and condition and as per agreement executed by you. You are further directed to deposit security which is equal to 3 months rent and one month's rent in advance."

Reference is also made to a list of authorised squatters prepared some time in 2004 a copy of which has been placed on record.

Submissions of Counsel

13. The contentions of Mr. Maninder Singh, learned counsel for the petitioners is that it was impermissible in law for the MCD to wriggle out of first affidavit filed by Shri Jagdish Chandra on 15.5.1997 by stating that it was based on mistaken facts; that unlike that affidavit which contained a verification clause to the effect that the affidavit was based on the records of the case, the verification appended to the subsequent affidavits do not contain such a statement. He placed

reliance on the judgment of the Hon'ble Supreme Court in ***Akhara Brahm Buta v. State of Punjab*** (1992) 4 SCC 243, ***Salkia Businessmen's Assn. v. Howrah Municipal Corprn.*** (2001) 6 SCC 688, ***Hope Plantations Ltd. v. Taluk Land Board, Peermade & Anr***. (1998) SC (7) 404 and lastly the judgment of the Division Bench of the Bombay High Court (Nagpur Bench) in ***Dr. Sanjay v. State of Maharashtra*** AIR 2004 Bombay 245. According to him, the principles of constructive res judicata would apply and in terms of the Order dated 5.5.2000 of this Court, it was not open to the MCD to now plead that the petitioners were not authorised squatters. He further pointed out that in terms of the affidavit dated 15.5.1997 it was clear that the Orders of the Hon'ble Supreme Court in ***Gainda Ram v. UOI*** (1993) 3 SCC 178 would not apply to the pre-1982 squatters who in any event were to be given priority. He also pointed out with reference to the Orders passed by the Hon'ble Supreme Court In ***Saudan Singh v. NDMC*** (1992) 2 SCC 458, ***Ramesh Kumar v. MCD*** (2002) 10 SCC 481, ***Gainda Ram v. MCD*** (1998) 1 SCC 188 that the question of the petitioners having to apply for the squatting licence under any of the Schemes announced after 1979 did not arise since the petitioners were already eligible squatters of 1979. He referred to the photocopies of some of the challans issued to the members of the petitioner association in 1979 to show that they were squatting since then.

14. On behalf of the MCD, Mr. Vibhu Shankar places reliance on the judgment and orders passed by the Hon'ble Supreme Court in the matter of squatters and hawkers. It is stated that the petitioners do not figure in the survey conducted in December 1982. They do not figure in any of the subsequent surveys conducted pursuant to the

Orders of the Hon'ble Supreme Court. They also did not apply in 1992 for allotment of squatting sites. Since the Hon'ble Supreme Court was examining the question of implementing a national policy on hawkers, as was evident from its Orders dated 25.8.2005 and 3.3.2006 in ***Gainda Ram's*** case, the question of considering the petitioners for grant of squatting licence did not arise. Further the implementation of the national policy was sub judice before the Hon'ble Supreme Court. It is accordingly contended that the petitioners were unauthorised occupants and were liable to be removed.

Legal effect of the affidavit dated 15.5.1997 and the Order dated 5.5.2000

15. This Court finds that the present case turns on certain peculiar facts and circumstances. The narration of the events thus far leaves no manner of doubt that first round of litigation which came to an end with the Order dated 5.5.2000 of this Court proceeded entirely on the factual position placed on record by the MCD through the affidavit dated 15.5.1997 of its Assistant Commissioner Shri Jagdish Chandra. The said affidavit very categorically states that the petitioners here were authorised squatters of 1979; that they were issued tehbazari receipts since 1979 onwards and that these were the only records available with the MCD and that the judgment of the Hon'ble Supreme Court in ***Gainda Ram*** does not apply to these pre-1982 squatters. The affidavit is supported by a verification which says that the affidavit is true to the records of the case. This Court when it passed the order dated 5.5.2000 had before it only this affidavit and therefore proceeded on the footing that the said affidavit was true to whatever records were available in the MCD at that time. Admittedly

no Review petition was filed by the MCD against the Order dated 5.5.2000 on the ground that the affidavit dated 15.5.1997, on the basis of which that Order was passed, contained mistaken facts or was erroneous. Neither was any appeal filed against the said Order. The present records also do not falsify the said affidavit dated 15.5.1997. In fact the photocopies of some of the 1979 challans issued to the members of the petitioner association, which have been enclosed to the writ petitions, probablises what has been stated in this regard in para 2 of the affidavit dated 15.5.1997.

16. The only method available to the MCD, if at all, was to show that (a) the records of the MCD do not support the position stated in the first affidavit dated 15.5.1997 and (b) that the records in fact support the position stated in the subsequent affidavits. However, the MCD has candidly stated that it does not have the record to demonstrate either position. The list of authorised squatters now produced is prepared in accordance with the ***Gainda Ram*** scheme and therefore obviously does not include the squatters of 1979 (who were pre-***Gainda Ram***) and whose names are shown in the list appended to the affidavit dated 15.5.1997. The allotment letter of only one person has been produced and that too is of 1983. The pre-1979 allotment letters produced by the MCD do not pertain to this area at all. If the Court were to simply go by the changed stand of the MCD which has no support from the record, then there is every danger of the MCD coming up with another changed stand subsequently. That would not be a prudent approach for the Court to adopt. In the circumstances, it is not possible for this Court to accept the contention of the MCD in its subsequent affidavits that what was stated in the first affidavit dated 15.5.1997 was bases on “mistaken facts.”

17. This does appear to the Court to be an instance where the MCD is attempting to overcome an earlier binding decision between the same parties by filing a different affidavit in the subsequent proceedings. The principles of res judicata do get attracted and would prevent the MCD from taken a changed stand and thereby attempt to reopen a settled issue. The Hon'ble Supreme Court in ***Hope Plantations Ltd. v. Taluk Land Board*** (supra) explained the law in the following words (SCC, p. 608):

> "It is settled law that the principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata is often treated as a branch of the law of estoppel though these two doctrines differ in some essential particulars. Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstratedly wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are "cause of action estoppel" and "issue estoppel". These two terms are of common law origin. Again, once an issue has been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that the issue was wrongly determined. Their only remedy is to approach the higher forum if available. The determination of the issue between the parties gives rise to, as noted above, an issue estoppel. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also operates in subsequent suits between the same parties in which the same issue arises. Section 11 of the Code of Civil Procedure contains provisions of res judicata but these are not exhaustive of the general doctrine of res judicata. Legal principles of estoppel and res judicata are equally applicable in proceedings before administrative authorities as they are based on public policy and justice.

This has been followed by the Bombay High Court in ***Sanjay G Khemuka v. State of Maharashtra*** (supra).

18. In ***Salkia Businessmen's Assn. v. Howrah Municipal Corpn.*** (supra) the Hon'ble Supreme Court was considering a case where on the basis of a compromise reached between the petitioners and the Municipal Corporation of Howrah, certain orders had been earlier passed by the High Court and in the subsequent round of litigation, the High Court had permitted the Corporation to wriggle out of the compromise. The Hon'ble Supreme Court expressed its disapproval thus (SCC at p. 691):

> The learned Single Judge as well as the Division Bench of the High Court have not only oversimplified the matter but seem to have gone on an errand, carried away by some need to balance hypothetical public interest, when the real and only question to be considered was as to whether the respondent Authorities are bound by the orders passed by the Court on the basis of the compromise memorandum and whether the proposed move on their part did not constitute flagrant violation of the orders of the Court — very much binding on both the parties. The High Court failed to do justice to its own orders. If courts are not to honour and implement their own orders, and encourage party litigants — be they public authorities, to invent methods of their own to short-circuit and give a go-by to the obligations and liabilities incurred by them under orders of the court — the rule of law will certainly become a casualty in the process — a costly consequence to be zealously averted by all and at any rate by the highest courts in the States in the country. It does not, in our view, require any extraordinary exercise to hold that the memorandum and terms of the compromise in this case became part of the orders of the High Court itself when the earlier writ petition was finally disposed of on 13-2-1991 in the terms noticed supra, notwithstanding that there was no verbatim reproduction of the same in the order. The orders passed in this regard admit of no doubt or give any scope for controversy. While so, it is beyond one' s comprehension as to how it could have been viewed as a matter of mere contract between the parties and under that pretext absolve itself of the responsibility to enforce it, except by doing violence to the terms thereof in letter and spirit. As long as the earlier order dated 13-2-1991 stood, it was not permissible to go behind the same to ascertain the substance of it or nature of compliance when the manner, mode and place of compliance had already been stipulated with meticulous care and detail in the order itself. The said decision was also not made to depend upon any contingencies beyond the control of parties in the earlier proceedings."

19. In a later decision, in a different factual context, a three-Judge

bench in ***Dwarka Prasad Agarwal v. B.D. Agarwal***,(2003) 6 SCC 230, the Hon'ble Supreme Court said it was not approving the above observations in ***Salkia Businessmen's Assn***. It said (at SCC, p. 244)**:**

> "We may, however, hasten to add that we do not intend to put a seal of our approval to those observations but only wish to point out as to how courts or the statutory authority may construe a consent order."

When the facts leading to the decision in ***Dwarka Prasad Agarwal*** are read carefully, it appears that the decision in ***Salkia Businessmen's Association*** was sought to be distinguished in its application to the facts of the case before the Court and was not overruled as such. In ***Dwarka Prasad Agarwal*** the Hon'ble Supreme Court took the view that the High Court hearing a writ petition lacked the jurisdiction to pronounce upon a compromise entered into between the parties in a suit. This is clear from the following observations made in ***Dwarka Prasad Agarwal*** (SCC, p. 245):

> "It is beyond any cavil that no writ can be issued if the disputes involve private law character. The writ court has also no jurisdiction to determine an issue on private dispute over a property or right under a partnership. While purporting to record a compromise, the writ court cannot enlarge its jurisdiction by directing that the suits pending in different courts filed or different causes of action would also stand compromised. By reason thereof the writ court would be entrenching upon the jurisdiction of the civil court indirectly which it could not do directly. For the purpose of granting permission even for withdrawal of suit in terms of Order 23 Rule 1 of the Code of Civil Procedure, the civil courts themselves were required to apply their mind as to whether having regard to the dispute between the parties, a case therefor has been made out or not. The civil court is required to act on its own and not on the basis of any direction of any other court determining a totally foreign issue."

20. However, that is not the position in the present case. The order

dated 5.5.2000 cannot be said to be (and it was not even contended as such by the counsel for the MCD) without jurisdiction. For the reasons already explained, the basis on which the said order has been made, viz., the affidavit dated 15.5.1997 of the MCD, has not been shown to be false or contrary to the record. In any event the law as explained in ***Hope Plantations*** would apply in the facts of the present case.

The effect of the Orders of the Supreme Court

21. The Orders of the Hon'ble Supreme Court in ***Saudan Singh v. NDMC*** and ***Gainda Ram*** draw a distinction between the hawkers who were required to apply for a regular hawking licence and those hawkers i.e the pre-1982 hawkers who were not. The guidelines first laid down in ***Saudan Singh*** (supra) and reiterated in ***Gainda Ram*** bring out this distinction. These were:

> "(1) Persons who have been found squatting between 1970 and 1982 and whose names are contained in the survey report prepared after the survey conducted in 1982 will receive first priority for grant of tehbazari permission subject to the scrutiny of their claims.
> (2) Insofar as casual tehbazari on weekly holidays, festivals/melas, etc., is concerned, as well as at the 67 weekly bazars held, persons availing of the said benefit will continue to be granted the casual or weekly tehbazari.
> (3) Squatters who have started squatting/hawking in 1983 onwards and who were not found on the date of survey would also be considered for grant of open tehbazari of 6' x 4' subject to the production of proof of continuous squatting and proof of residence and nationality. Such squatters/hawkers would be granted open tehbazari subject to availability of space provided they have cleared the dues of the MCD; and
> (4) Persons who do not fall within the aforesaid three categories would be permitted to apply for hawking licences under Section 420 of the Delhi Municipal Corporation Act, 1957 and their applications would be considered on merit for permission to hawk — not squat — by moving in specified areas with their goods on their heads or on cycles. They will be entitled to hawk with their goods anywhere in the zone in respect of which they have been granted a licence. However, such permission will be

subject to any restrictions that may be imposed by the residential associations of different colonies."

The subsequent orders including the one in ***Gainda Ram v. MCD*** (1998) 1 SCC 188 make no change to the position concerning the pre-1982 hawkers. Thus in respect of the latter, they were not expected to apply under any scheme but a survey was expected to be carried out to determine who they were and where they were located. The list of squatters enclosed to MCD's affidavit dated 15.5.1997 filed in the earlier writ petition is consistent with this requirement. In terms of the first guideline in ***Saudan Singh*** they were to receive priority for grant of tehbazari permission.

22. The position that emerges is this. It is not as if there were no squatters prior to 1979 at Mohan Singh Market. On their part the petitioners have placed on record copies of challans issued to some of them which go to show that they were squatting in the Mohan Singh Market, opposite to INA even in 1979. The MCD is unable to show anything to the contrary. In other words it is not able to deny that the members of the petitioner association whose names figure in the list of 51 persons appended to the affidavit dated 15.5.1997 were not squatters since 1979. The same affidavit dated 15.5.1997 also states that there was no question of the survey of 1982 including the names of the petitioners. If indeed the petitioners were not required to apply under any scheme because they were already authorised squatters of 1979 then it matters a little that they do not figure in the survey conducted in 1982 or any subsequent survey. Similarly, it matters a little that they did not apply for regular hawking licence in the year 1992 pursuant to the Orders of the Hon'ble Supreme Court.

Conclusion and Directions

23. The conclusion is that as far as the members of the petitioner Association whose names figure in the list appended to the affidavit dated 15.5.1997 are concerned their position as regular squatters got crystallized once the Order dated 5.5.2000 was passed by this Court. An attempt was made by Mr. Vibhu Shankar to contend that the Order dated 5.5.2000 does not categorically recognise the petitioners to be authorised squatters. However the position that emerges on the reading of the Order dated 5.5.2000 is that the Court, acting upon the affidavit dated 15.5.1997 of the MCD, drew a distinction between the authorised hawkers and those who were not so authorised. The highlighted portions of the said affidavit (in para 2 of this judgment) clearly indicates that the petitioners here were authorised squatters since 1979. It was in that context that the Order dated 5.5.2000 directed that:

> "So far the authorised squatters in the said market are concerned, they shall be directed not to encroach upon the area beyond which they are not entitled to occupy and necessary action in accordance with law shall be taken in respect of such squatters. Necessary verification in that regard should be made by the concerned respondent within three weeks from today and after such verification, action shall be taken by the concerned respondent in accordance with law and in terms of the directions issued herein."

The above directions were relevant for the petitioners here who were the authorised squatters according to the affidavit dated 15.5.1997.

24. For all of the above reasons, the petitioners here are entitled to succeed. The following directions are accordingly issued:

(i) The MCD will now issue to each of the 51 persons, whose names figure in the list appended to the affidavit dated 15.5.1997, letters confirming their tehbazari status as authorised squatters in the Mohan Singh Market, opposite INA since 1979. Their names will be maintained as such in the records of the MCD for future reference. Their further status in terms of any subsequent scheme will be determined on that basis. They will not be disturbed or removed except in accordance with law.

(ii) The MCD will continue to strictly implement the directions of this Court in its order dated 5.5.2000 in W.P. (C) No. 2052 of 1996 in respect of all unauthorised squatters in the Mohan Singh Market

(iii) The MCD will take effective steps to ensure that only authorised squatters are allowed to function in the Mohan Singh and INA Markets consistent with the directions issued by the Hon'ble Supreme Court from time to time in ***Gainda Ram's*** case, and that all unauthorised squatters are removed from these markets in accordance with law.

25. With the above directions, the writ petitions are allowed with no order as to costs. All pending applications stand disposed of.

Sd/-
S. MURALIDHAR,

J
JUNE 11, 2007
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